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Human rights situations that require the Council's attention

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Still waiting for accountability for Gaza/Israel conflicts

Amnesty International wishes to raise the issue of justice, truth and reparations for violations of international humanitarian law, including war crimes, committed by both parties during the conflicts in Gaza and Israel in December 2008-January 2009 and November 2012. Neither the Israeli authorities nor the Hamas de facto administration in Gaza have conducted independent, impartial and effective investigations or taken serious steps to hold their forces to account, as international law requires, for violations committed during either conflict. Instead of addressing this failure, the international community, including UN bodies, has continued to evade responsibility. Customary international law stipulates that statutes of limitations do not apply to war crimes or other crimes under international law. The Human Rights Council must help ensure that international law is upheld and meaningful steps towards accountability for war crimes are taken, including through international justice mechanisms such as the International Criminal Court (ICC).

When Israeli forces launched Operation "Pillar of Defense" on the Gaza Strip on 14 November 2012, Gaza's 1.7 million people were immediately reminded of Operation "Cast Lead" in December 2008-January 2009. The 2008-2009 conflict saw some 1,400 Palestinians and 13 Israelis killed. The Palestinian deaths included hundreds of civilians, among them some 300 children. Most were killed in Israeli attacks with long-range high-precision munitions; others were killed by Israeli ground troops. Three Israeli civilians also died as a result of indiscriminate rocket or mortar attacks by Palestinian armed groups. The UN Fact-Finding Mission on the Gaza Conflict confirmed in its September 2009 report, as Amnesty International and other human rights organizations had also documented, that both Israeli forces and Palestinian armed groups had committed war crimes during the conflict.

Following "Cast Lead", the Israeli military opened 52 criminal investigations into alleged violations during the conflict. The last public update on these investigations was issued by Israel's Military Advocate General (MAG) Corps in March 2011, but the MAG informed the government-appointed Turkel Commission in mid-2012 that seven investigations were still pending. The majority of these investigations were closed without any charges being filed, and the Israeli military has provided virtually no information about the few investigations still ongoing years after the conflict. These facts epitomize the wider problems with Israel's system of military investigations and the barriers Palestinian victims face in obtaining justice.

In the five years since "Cast Lead", only four Israeli soldiers of relatively low rank have been indicted for crimes committed during the conflict. Three of the four indictments failed to reflect the gravity of the crimes committed. Two Israeli army Givati Brigade soldiers who forced a nine-year-old boy to open bags they suspected of being booby-trapped, effectively using him as a "human shield", were charged with "exceeding authority" and "unbecoming conduct." Staff Sergeant S. was charged with manslaughter in a case relating to the killing of two women walking in a group carrying white flags after being ordered to evacuate their homes in Juhr al-Dik by Israeli forces. However, despite extensive evidence provided by an Israeli human rights organization, the military's investigation into the two women's deaths was ultimately closed and the charges against Staff Sergeant S. were reduced to "illegal use of a weapon" and "unbecoming conduct" after a plea bargain. He was sentenced to 45 days' imprisonment and a suspended six-month sentence.

Israeli investigations into other cases of civilians killed during the conflict while carrying white flags did not even lead to criminal charges. On 13 January 2009, 47-year-old Rawhiya al-Najjar was shot in the head as she walked ahead of a group of women carrying a white flag near her home in the village of Khuza'a, in the south of Gaza. Her 14-year-old daughter Heba, who was next to her when she was shot, told Amnesty International:

> *At about 8am we decided to leave and go to the centre of the village where we would be safe. My mother gave people white cloths to make flags and she also had a white flag and was at the front of the group... We walked a few steps and [another young relative] Yasmine said she saw soldiers in houses nearby. My mother turned her head to talk to the neighbours, telling them not to be afraid, and at that moment she was shot in the head, on the left side, and the bullet went through and out from the right side. She fell, and Yasmine tried to help her; she was also shot in the leg. Everybody ran back. Nobody could go to help my mother or to recover her body and she lay there on the road till the evening, when the soldiers left.*

Amnesty International's delegates examined the house where the soldiers who shot Rawhiya were reportedly stationed, and saw the hole made by the snipers in the wall of the house, which faced the spot where she was shot about 100m away. At least two human rights organizations, one Israeli and one Palestinian, submitted complaints in 2009 about the killing; in early 2012, the Israeli human rights organization B'Tselem was informed that the criminal investigation had been closed and that no charges would be filed.

In the eight-day conflict in November 2012, some 165 Palestinians, including more than 30 children and approximately 70 other civilians, and six Israelis, including four civilians, were killed. Israel made extensive use of precise weaponry, especially drone-fired missiles, during the conflict; Amnesty International documented 18 drone-fired missile strikes in which civilians were killed. Once again, neither side has conducted independent and impartial investigations into war crimes committed by its forces, and no one has been held accountable.

The Israeli military has disclosed few details of its inquiries into killings of civilians and destruction of civilian property in November 2012. To Amnesty International's knowledge, no criminal investigations have been opened. On 11 April 2013, the MAG Corps reported that inquiries into about 65 incidents from the conflict had been closed, while at least 15 further incidents were still being examined. The MAG stated that it had found no basis for initiating a criminal investigation in the 65 cases, which included an air strike on 18 November 2012 which killed 10 members of the al-Dalu family – including four children under the age of eight, a teenage girl, and four women – in their home, as well as two of their neighbours.

The MAG has published no further information on its examination of complaints from the conflict. It is clear that, once again, Israel's military investigations do not satisfy the international standards of independence, impartiality, effectiveness, thoroughness, promptness and transparency, and have so far served to perpetuate impunity rather than to provide victims with justice, truth or reparations.

The Hamas administration has failed to conduct investigations into the firing of indiscriminate rockets during either the 2008-2009 or November 2012 conflicts. Nor has anyone been held to account for the summary killings on 16 and 20 November 2012 of seven Palestinians who had been detained by the Hamas authorities for alleged "collaboration" with Israel.

The report of the UN Fact-Finding Mission on the Gaza Conflict and other authoritative reports submitted to the UN detailed the war crimes committed during Operation "Cast Lead". Reports on Operation "Pillar of Defense" by the Office of the High Commissioner of Human Rights and international and local human rights groups have also documented serious violations of international humanitarian law.[1]

The victims of both conflicts are still waiting for justice, and civilians on both sides fear the next conflict. Justice, truth and reparations are the best guards against future violations. This cannot be emphasized enough, especially as Palestinian and Israeli representatives discuss a US-brokered "framework agreement" that appears to ignore international humanitarian and human rights law, despite the fact that these should be at the core of any future negotiations.

Three years ago, the Human Rights Council recommended that the General Assembly reconsider the report of the UN Fact-Finding Mission on the Gaza Conflict and submit it to the Security Council and urge the latter to consider referring the situation in the Occupied Palestinian Territory to the ICC Prosecutor. This still has not happened. The Human Rights Council must continue to press for implementation of the Fact-Finding Mission's recommendations, and pursue justice, truth and reparations in relation to crimes committed by both parties to the Israel/Gaza conflicts in 2008-2009 and November 2012.

[1] See: Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, Addendum, A/HRC/22/35/Add.1, issued on 5 March 2013.

Amnesty International urges the Human Rights Council to demand that Israel and the Hamas administration conduct independent, impartial and effective investigations into reports of crimes under international law and other human rights violations committed in November 2012. More than one year after the conflict, the Council should consider setting a deadline for such investigations, and mandating experts to monitor them, as was done after Operation "Cast Lead".

Finally, Amnesty International urges all Council members to keep open other avenues for justice, truth and reparations, including universal jurisdiction. All states have an obligation to seek to arrest alleged perpetrators of crimes under international law and bring them to justice in proceedings complying with international fair trial standards.